

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

DEC - 6 2002

Application of

ECHOSTAR COMMUNICATIONS CORPORATION,
GENERAL MOTORS CORPORATION,
HUGHES ELECTRONICS CORPORATION,

Transferors,
and

ECHOSTAR COMMUNICATIONS CORPORATION,
Transferee,

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

CS Docket No. 01-348

To: The Presiding Officer and Chief Administrative Law Judge, Richard L. Sippel

**OPPOSITION TO REQUEST FOR
EMERGENCY PREHEARING CONFERENCE**

EchoStar Communications Corporation ("Echostar"), General Motors Corporation ("GM") and Hughes Electronics Corporation ("Hughes"), a wholly owned subsidiary of GM (collectively, the "Applicants"), hereby oppose the request for an emergency prehearing conference filed by Johnson Broadcasting, Inc. and Johnson Broadcasting of Dallas, Inc. (collectively, "Johnson") on November 26, 2002.¹

¹ Opposition to Request to Certify Question as to Whether Hearing Should Be Held and Request for Emergency Prehearing Conference (filed Nov. 26, 2002) ("Johnson Request"). This pleading responds only to Johnson's request for an emergency prehearing conference and accordingly, is permitted by Commission Rule 1.294 (a). 47 C.F.R. § 1.294(a) ("Any party may file an opposition to an interlocutory request filed in [a hearing] proceeding.").

No. of Copies rec'd
List ABCDE

OK

Johnson requests a prehearing conference “to determine whether DirecTV and EchoStar wish to participate in a hearing before the FCC.”² Johnson misunderstands the clear meaning of the Applicants’ Request to Certify Question as to Whether a Hearing Should Be Held.³

In that pleading, the Applicants argue that a hearing is not necessary because the application can and should be granted without a hearing under Commission policies and undisputed facts, and the Presiding Officer should certify *that* question to the Commission! In a separate filing with the Commission, the Applicants have also requested suspension of the hearing pending Commission review of an amended application curing the Commission’s competition concerns.⁵ However, if the Commission does not suspend the hearing, and if the Presiding Officer were to disagree with the Applicants’ view that the merger application can be granted without the hearing, the Applicants remain fully committed to prosecuting the merger application and participating in the hearing within the timeframe contemplated under the Applicants’ merger agreement. Accordingly, no prehearing conference is necessary “to determine whether DIRECTV and EchoStar wish to participate in a hearing before the FCC.”

The Applicants also note again that, as stated in their Request to Certify Question, the Presiding Officer need not rule on that request unless the Commission

² Johnson Request, at 4-5.

³ *See* Applicants’ Request to Certify Question as to Whether a Hearing Should Be Held (filed Nov. 18, 2002) (“Request to Certify Question”).

⁴ *See id.* at 1-2.

⁵ *See* Applicants’ Petition for Suspension of Hearing (filed Nov. 27, 2002), at 6.

decides not to suspend the hearing or, having suspended it, restarts the hearing process. In recognition of these same circumstances, the Presiding Officer has already ruled correctly that the date for a prehearing conference should be deferred pending the Commission's review of the Applicants' Amended Application.⁶ Johnson proffers no sound reason for the Presiding Officer to reverse course.


For these reasons, Johnson's request for an emergency prehearing conference should be denied.

Respectfully submitted,



Gary M. Epstein
James H. Barker
Latham & Watkins
555 11th Street, N.W.
Suite **1000**
Washington, D.C. 20004
(202) 637-2200

*Counsel for General Motors
Corporation and Hughes Electronics
Corporation*



Pantelis Michalopoulos
Philip L. Malet
Steptoe & Johnson LLP
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 429-6494

*Counsel for EchoStar Communications
Corporation*

December 6, 2002

⁶ See *Application of EchoStar Communications Corp., et al.*, Order of Chief Administrative Law Judge, FCC 02M-102, CS Docket No. 01-348, rel. Nov. 14, 2002, at n.2.

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of December 2002, a copy of the foregoing was sent by first-class mail (or by hand delivery as indicated by asterisk) to the following:

* Honorable Richard Sippel
Chief Administrative Law Judge
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

* Charles Kelly, Esq.
Chief, Investigations and Hearings Division
Enforcement Bureau
Federal Communications Commission
445 12th Street, SW, Room 3-B431
Washington, D.C. 20554

Christopher C. Cinnamon, Esq.
Cinnamon Mueller
307 North Michigan Avenue, Suite 1020
Chicago, IL 60601
Counsel to American Cable Association

Henry L. Bauman
National Association of Broadcasters
1771 N Street, N.W.
Washington, D.C. 20036

Ted S. Lodge, Esq.
Pegasus Communications Corp.
225 City Line Avenue, Suite 200
Bala Cynwyd, PA 19004

Patrick J. Grant, Esq.
Arnold & Porter
555 12th Street, N.W.
Washington, D.C. 20004-1206
Counsel to Pegasus Communications Corp.

William D. Silva, Esq.
Law Offices of William D. Silva
5335 Wisconsin Avenue, N.W., Suite 400
Washington, D.C. 20015-2003
Counsel to WordNetwork

Alan C. Campbell, Esq.
Irwin, Campbell & Tannenwald, P.C.
1730 Rhode Island Avenue, N.W., Suite 200
Washington, D.C. 20036-3101
Counsel to Family Stations, Inc.

Peter Tannenwald, Esq.
Irwin, Campbell & Tannenwald, P.C.
1730 Rhode Island Avenue, N.W., Suite 200
Washington, D.C. 20036-3101
Counsel to North Pacific International Television, Inc.

Jack Richards, Esq.
Keller and Heckman LLP
1001 G Street, N.W., Suite 500 West
Washington, D.C. 20001
Counsel to National Rural Telecommunications Cooperative

Stephen M. Ryan, Esq.
Manatt, Phelps & Phillips, LLP
1501 M Street, N.W., Suite 700
Washington, D.C. 20005
Counsel to National Rural Telecommunications Cooperative

Arthur V. Belendiuk, Esq.
Smithwick & Belendiuk, P.C.
5028 Wisconsin Avenue, N.W.
Suite 301
Washington, D.C. 20016
Counsel to Johnson Broadcasting & Dallas, Inc.

Debbie Goldman, Esq.
Communications Workers of America
501 Third Street, N.W.
Washington, D.C. 20001

Kemal Kawa, Esq.
O'Melveny & Myers LLP
1650 Tysons Boulevard
McLean, VA 22102
Counsel to Northpoint Technology, Ltd.

John R. Feore, Jr., Esq.
Dow, Lohnes & Albertson, PLLC
1200 New Hampshire Avenue, N.W.
Suite 800
Washington, D.C. 20036
Counsel to Paxson Communications Corporation

Mark A. Balkin, Esq.
Hardy, Carey & Chautin LLP
110 Veterans Blvd., Suite 300
Metairie, LA 70005
Counsel to Carolina Christian Television, Inc. and LeSea Broadcasting Corporation

Scott R. Flick, Esq.
Shaw Pittman LLP
2300 N Street, N.W.
Washington, D.C. 20037
Counsel to Univision Communications

Barry D. Wood, Esq.
Wood, Maines & Brown, Chartered
1827 Jefferson Place, N.W.
Washington, D.C. 20036
Counsel to Eagle III Broadcasting, LLC and Counsel to Brunson Communications, Inc.

A handwritten signature in cursive script, reading "Rhonda M. Bolton", written in black ink.

Rhonda M. Bolton